

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL SHAVERS,

Plaintiff,

v.

Case No. 2:05-cv-125
HON. R. ALLAN EDGAR

KERRY SHANTZ, et. al,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Michael Shavers, a state prisoner in the custody of the Michigan Department of Corrections, brings this *pro se* civil rights action under 42 U.S.C. § 1983. Defendants Kerry W. Shantz, Donald Mansfield, Gary E. Koben, Robert J. Brehm, Daniel A. Rosebohm, Arnulfo Ortiz, and Mark Rice move for summary judgment pursuant to Fed. R. Civ. P. 56. [Doc. No. 40].

The case was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.1. The Magistrate Judge has submitted his report and recommendation. [Doc. No.73]. The Magistrate Judge recommends that the defendants' summary judgment motion be granted and that the plaintiff's entire complaint be dismissed with prejudice as to all defendants. It is further recommended that the plaintiff's motion to file declaration of allegations [Doc. No. 34] be granted.

There are objections to the report and recommendation by the plaintiff. [Doc. No. 74]. After reviewing the record *de novo*, the Court concludes that the plaintiff's objections are without merit and are **DENIED**. The Court **ACCEPT and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.3(b). The defendants'

motion for summary judgment [Doc. No. 40] is **GRANTED**. The plaintiff's entire complaint shall be **DISMISSED WITH PREJUDICE** as to all defendants. The plaintiff's motion to file declaration of allegations [Doc. No. 34] is **GRANTED**.

For the reasons expressed by the Magistrate Judge in the report and recommendation, the Court finds that an appeal of this action would not be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wigglesworth*, 114 F. 3d 601, 611 (6thCir. 1997). The Court discerns no good-faith basis for an appeal. Should the plaintiff appeal this decision, the Court will assess the \$455 appellate filing fee pursuant to § 1915(b)(1), *McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three strikes" rule of 28 U.S.C. 1915(g). If he is so barred, he will be required to pay the \$455 appellate filing fee in one lump sum.

A separate judgment will enter.

SO ORDERED

Dated: August 30, 2006.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE